

REMARKS

Claims 11, 13-20 and 28-50 are now pending in this Amendment.

ELECTION OF SPECIES

In the Office Action mailed January 11, 2007, the Examiner has required an election of the species shown in Figs. 3, 7, 8, 9, 10A, 11, and 13, respectively. In support of this requirement, the Examiner indicates that “[t]he species are independent or distinct because on pages 6 and 7 of the specification, the Applicants expressly state that Figs. 3, 7, 8, 9, 10A, 11, and 13 are different embodiments”. The Examiner states that there no generic claims corresponding to both species.

Applicants respectfully submit that the restriction requirement is improper and traverse the requirement. Applicants first note that the pending claims cover multiple combinations of the embodiments shown in Figs. 3, 7, 8, 9, 10A, 11, and 13. For example, Claim 41 is directed to a surgical navigation system that includes a first section, a tracking device associated with the first section, and a holding device operable to assist holding the first section relative to the portion of the anatomy. A review of Figs. 3, 7, 8, 9, 10A, 11, and 13 shows all these elements are present in these Figures and therefore is generic.

In addition, for the present restriction requirement to be proper, the Examiner must provide an explanation why there would be a serious burden on the Examiner if the restriction was not required. In this regard, the MPEP states:

Where the inventions as claimed are shown to be independent or distinct under the criteria of MPEP § 806.5(c) - § 806.6, the examiner, in order to establish reasons for insisting upon restriction,

must explain why there would be a serious burden on the examiner if restriction is not required.

MPEP §808.02 (emphasis added)

The restriction requirement contains no statement which complies with the requirement of MPEP §808.02. In particular, the Examiner does not indicate that the species are in separate classifications, are a separate status in the art, or are in a different field of search. Rather, the Examiner indicates that they are described by Applicants as being of different embodiments, which does not imply that a serious burden would be created if these embodiments were searched together. It is Applicants belief, however, that the field of search would be at least similar if not the same. Applicants submit, therefore, that there is no serious burden to search each of the Claims together in a single application, and a serious burden is required by MPEP § 808.02 to require an election be made. Applicants request that each of the Claims be examined in the present application.

Petition Director

If the restriction requirement is maintained and made final, the Applicants preserve the right to petition the Director to review the requirement at any time, including after final action or allowance of claims to the invention elected (37 C.F.R. § 1.144).

In view of the above, Applicants respectfully request consideration or modification of the requirement of species election.

Election with Traverse

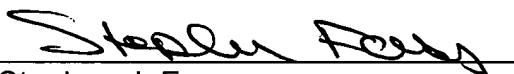
Applicants elect, with traverse to have the species which read on the embodiment shown in Fig. 3, which include Claims 11, 12-17, 19, 28-33, 38-43, 47-50. However, Applicants note that these claims also read on many of the other disclosed embodiments. In addition, Applicants reserve the right to file any unelected claims in later filed divisional patent applications.

Conclusion

It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By: 
Stephen J. Foss
Reg. No. 31,251

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

SJF/MLT/mlh/srh